

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
The Honorable Richard A. Jones

RECEIVED (DROP BOX)

APR 29 2021

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Delaware corporation; and GOPRO, INC., a Delaware corporation,

Plaintiffs,

v.

PENGYU BUILDING MATERIALS, an unknown entity; XUE MINGHAI, an individual, d/b/a PENGYU BUILDING MATERIALS/WHOLESALE OF OUTDOOR; CHENTAOTAO, an unknown entity, d/b/a NANA GYENFIE/EXPLORE THE OUTDOORS; NANA GYENFIE, an individual; HU WEI, an individual; ZHAO RONGLIN, an individual; LI ZHONGYI, an individual; PAN LINXING, an individual; ZHU SHAOCHUAN, an individual; and DOES 1-10,

Defendants.

No. 2:21-cv-00358-RAJ

**PLAINTIFFS' EX PARTE
MOTION FOR EXPEDITED
DISCOVERY**

NOTE ON MOTION CALENDAR:
APRIL 29, 2021

[FILED UNDER SEAL]

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs Amazon.com, Inc. ("Amazon") and GoPro, Inc. ("GoPro") (collectively, "Plaintiffs") respectfully move the Court for an order granting leave to serve third-party subpoenas prior to the Rule 26(f) conference in order to obtain records relating to the identities and locations of Defendants. Specifically, Plaintiffs seek leave to serve subpoenas on banks and email service providers in order to discover information regarding Defendants' current

PLAINTIFFS' MOTION FOR EXPEDITED
DISCOVERY [FILED UNDER SEAL] - 1
(No. 2:21-cv-00358-RAJ)

Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1640
206.622.3150 main • 206.757.7700 fax

1 whereabouts, the identities of the Does who conspired with them to perpetrate their
2 counterfeiting operation, and the location of the unlawful proceeds of that operation. This
3 expedited discovery will allow Plaintiffs to obtain additional information about the
4 Defendants—bad actors responsible for perpetrating an unlawful counterfeiting scheme
5 through which they advertised and sold counterfeit camera accessories in the Amazon store,
6 willfully deceiving Amazon, GoPro, and their customers. These same bad actors took
7 intentional and affirmative steps to obscure and conceal their true identities and whereabouts
8 from Plaintiffs by opening their Amazon Selling Accounts (“Selling Accounts”) with
9 fraudulent and falsified information. Without expedited discovery, Plaintiffs cannot determine
10 the current locations of the Defendants and the identities of other bad actors involved in the
11 scheme, and Plaintiffs will be left without a means to recover from Defendants’ harm.

12 **II. BACKGROUND**

13 **A. Plaintiffs’ Claims**

14 On March 12, 2021, Plaintiffs filed a Complaint alleging claims for trademark
15 infringement, false designation of origin, and false advertising under the Lanham Act, and a
16 violation of the Washington Consumer Protection Act. Complaint, Dkt. 1 (“Complaint”) at
17 ¶¶ 61-88. Plaintiffs also moved to temporarily seal this case during the pendency of a parallel
18 criminal investigation that Plaintiffs are actively conducting into the same Defendants in China,
19 in order to prevent Defendants from diverting or hiding evidence, assets, and counterfeit goods.
20 Plaintiffs’ Motion to Seal, filed on March 12, 2021 (“Motion to Seal”). The Court granted the
21 Motion to Seal on April 23, 2021. Order Granting Ex Parte Motion to Temporarily Seal
22 Documents and Case, filed on April 23, 2021.

23 Plaintiffs’ claims arise from Defendants’ unlawful sale of camera accessories utilizing
24 GoPro Trademarks without authorization on Amazon.com. When Defendants opened their
25 Amazon Selling Accounts, Defendants actively misled Amazon in an effort to obscure or
26 conceal their true locations. Declaration of Alex Calvert in Support of Plaintiffs’ Motion for
27 Expedited Discovery (“Calvert Decl.”) ¶¶ 5, 7-12. For instance, Defendants doctored false

1 credit card statements to substantiate their fake identities and to evade Amazon's controls. *Id.*
2 Plaintiffs have conducted a thorough investigation to determine the current whereabouts of
3 Defendants but have been unable to discern current locations for them.

4 **B. Amazon Selling Accounts**

5 Amazon offers third-party resellers and brand owners the ability to sell products in the
6 Amazon store by registering a Selling Account. The Defendants used seven different Selling
7 Accounts in the Amazon store to advertise, market, offer, distribute, and sell counterfeit GoPro
8 camera accessories in violation of GoPro's intellectual property rights, and in direct
9 contravention of Amazon's anti-counterfeiting terms and policies. Complaint ¶¶ 35-56.

10 Through their illegal actions, the Defendants willfully deceived Plaintiffs and their
11 customers, harmed the integrity of the Amazon store, tarnished Amazon's and GoPro's brand,
12 infringed GoPro's intellectual property rights, and damaged Amazon's and GoPro's customers.
13 *Id.* ¶¶ 65, 72, 78, 82, 87. The Defendants' illegal actions breached numerous provisions of the
14 Amazon Services Business Solutions Agreement ("BSA"), which entitles Amazon to injunctive
15 relief to stop the Defendants from infringing others' intellectual property rights. *Id.* ¶¶ 35-39,
16 79. The Defendants' actions constitute trademark infringement under the Lanham Act, 15
17 U.S.C. § 1114, false designation of origin and false advertising under the Lanham Act, 15
18 U.S.C. § 1125, and unfair and deceptive acts under the Washington Consumer Protection Act,
19 RCW 19.86.010, *et seq.*, for which Plaintiffs seek equitable relief and their costs and attorneys'
20 fees. *Id.* ¶¶ 61-88.

21 **C. Plaintiffs' Investigation of Defendants**

22 Plaintiffs have made significant, ongoing attempts to identify and locate the Defendants,
23 with limited success. When the Defendants opened their Selling Accounts, they provided false
24 names and addresses for each account in order to evade Amazon's account registration and
25 seller verification processes. For example, Defendants provided Amazon with false and
26 misleading credit card statements reflecting their false identities, in order to circumvent

1 Amazon's policies that require sellers to provide proof of their identities. Calvert Decl. ¶¶ 5, 7-
2 12.

3 **1. Pengyu Building Materials and Xue Minghai d/b/a Pengyu Building
4 Materials/Wholesale of Outdoor**

5 Based on its investigations, Amazon determined that the Selling Account of Defendant
6 Pengyu Building Materials and Defendant Xue Minghai, d/b/a Pengyu Building
7 Materials/Wholesale of Outdoor, is associated with two addresses in China. See Calvert Decl.
8 ¶ 5. Upon further investigation, the addresses appear to be false and deliberately misleading.
9 *Id.* Tellingly, Defendants also misled Amazon at the time they opened their Selling Account by
10 submitting a credit card statement for verification purposes that appears to have been digitally
11 altered to include a false address to evade Amazon's account registration and seller verification
12 processes. *Id.*

13 Additionally, the email address for the Selling Account is xueminghai96@sina.com.
14 Calvert Decl. ¶ 5. The @sina.com email domain is a free e-mail service popular in China that
15 is operated by the Chinese-based technology company, Sina Corporation. *Id.* There is no
16 known U.S. business address for this Selling Account. *Id.*

17 **2. Chentaotao d/b/a Nana Gyenfie/Explore the Outdoors and Nana
Gyenfie**

18 Based on its investigations, Amazon determined that the Selling Account of Defendant
19 Chentaotao and Defendant Nana Gyenfie, d/b/a Nana Gyenfie/Explore the Outdoors, is
20 associated with an address in China. Calvert Decl. ¶ 6.

21 Additionally, the email address for the Selling Account is taotaochen83@sina.com. *Id.*
22 The @sina.com email domain is a free e-mail service popular in China that is operated by the
23 Chinese-based technology company, Sina Corporation. *Id.* There is no known U.S. business
24 address for this Selling Account. *Id.*

25 **3. Hu Wei**

26 Based on its investigations, Amazon determined that the Selling Account of Defendant
27 Hu Wei was associated with an address in China. Upon further investigation, the address

1 appears to be false and deliberately misleading. Calvert Decl. ¶ 7. Tellingly, Defendant also
2 misled Amazon at the time they opened their Selling Account by submitting a credit card
3 statement for verification purposes that appears to have been digitally altered to include a false
4 address to evade Amazon's account registration and seller verification processes. *Id.*

5 Additionally, the email address for the Selling Account is mrhuwei86@hotmail.com.
6 Calvert Decl. ¶ 7. The @hotmail.com email domain is a free e-mail service operated by
7 Microsoft. *Id.* There is no known U.S. business address for this Selling Account. *Id.*

8 **4. Zhao Ronglin**

9 Based on its investigations, Amazon determined that the Selling Account of Defendant
10 Zhao Ronglin was associated with an address in China. Upon further investigation, the address
11 appears to be false and deliberately misleading. Calvert Decl. ¶ 8. Tellingly, Defendant also
12 misled Amazon at the time they opened their Selling Account by submitting a credit card
13 statement for verification purposes that appears to have been digitally altered to include a false
14 address to evade Amazon's account registration and seller verification processes. *Id.*

15 Additionally, the email address for the Selling Account is zhaoronglin12@sina.com.
16 Calvert Decl. ¶ 8. The @sina.com email domain is a free e-mail service popular in China that
17 is operated by the Chinese-based technology company, Sina Corporation. *Id.* There is no
18 known U.S. business address for this Selling Account. *Id.*

19 **5. Li Zhongyi**

20 Based on its investigations, Amazon determined that the Selling Account of Defendant
21 Li Zhongyi was associated with an address in China. Upon further investigation, the address
22 appears to be false and deliberately misleading. Calvert Decl. ¶ 9. Tellingly, Defendant also
23 misled Amazon at the time they opened their Selling Account by submitting a credit card
24 statement for verification purposes that appears to have been digitally altered to include a false
25 address to evade Amazon's account registration and seller verification processes. *Id.*

26 Additionally, the email address for the Selling Account is lizhongyii@163.com.
27 Calvert Decl. ¶ 9. The @163.com email domain is a free e-mail service popular in China that is

1 operated by the Chinese-based technology company, NetEase Information Technology
2 Corporation. *Id.* There is no known U.S. business address for this Selling Account. *Id.*

3 **6. Pan Linxing**

4 Based on its investigations, Amazon determined that the Selling Account of Defendant
5 Pan Linxing was associated with an address in China. Upon further investigation, the address
6 appears to be false and deliberately misleading. Calvert Decl. ¶ 10. Tellingly, Defendant also
7 misled Amazon at the time they opened their Selling Account by submitting a credit card
8 statement for verification purposes that appears to have been digitally altered to include a false
9 address to evade Amazon's account registration and seller verification processes. *Id.*

10 Additionally, the email address for the Selling Account is panlinxing87@163.com.
11 Calvert Decl. ¶ 10. The @163.com email domain is a free e-mail service popular in China that
12 is operated by the Chinese-based technology company, NetEase Information Technology
13 Corporation. *Id.* There is no known U.S. business address for this Selling Account. *Id.*

14 **7. Zhu Shaochuan**

15 Based on its investigations, Amazon determined that the Selling Account of Defendant
16 Zhu Shaochuan was associated with an address in China. Upon further investigation, the
17 address appears to be false and deliberately misleading. Calvert Decl. ¶ 11. Tellingly,
18 Defendant also misled Amazon at the time they opened their Selling Account by submitting a
19 credit card statement for verification purposes that appears to have been digitally altered to
20 include a false address to evade Amazon's account registration and seller verification
21 processes. *Id.*

22 Additionally, the email address for the Selling Account is
23 zhushaochuan86@hotmail.com. Calvert Decl. ¶ 11. The @hotmail.com email domain is a free
24 e-mail service operated by Microsoft. *Id.* There is no known U.S. business address for this
25 Selling Account. *Id.*

8. Third Party Bank and Email Providers Associated With Defendants

Plaintiffs have determined through investigation that the Defendants' Selling Accounts are associated with bank accounts at First Century Bank, which, on information and belief, is acting as an automated clearinghouse ("ACH") for a company called Payoneer. Calvert Decl. ¶ 13; Declaration of Scott R. Commerson in Support of Plaintiffs' Motion for Expedited Discovery ("Commerson Decl.") ¶ 2. In cases with similar fact patterns, Amazon has issued subpoenas to First Century Bank for financial records associated with Selling Accounts. First Century Bank has responded that the records requested within the subpoena were created and maintained by Payoneer, as part of a "special use account" opened exclusively to receive ACH funds. After Payoneer confirmed that it will accept subpoenas relating to First Century Bank accounts, Amazon proceeded to reissue subpoenas to Payoneer, which in turn produced responsive documents. Commerson Decl. ¶ 2.

Additionally, Defendants used email addresses operated by multiple email service providers in order to register their Selling Accounts. The domain for the email addresses used to register the Selling Accounts of Defendants Pengyu Building Materials, Xue Minghai d/b/a Pengyu Building Materials/Wholesale of Outdoors, Chentaotao d/b/a Nana Gyenfie/Explore the Outdoors, Nana Gyenfie, and Zhao Ronglin is @sina.com, a free e-mail service popular in China that is operated by the Chinese-based technology company, Sina Corporation. The domain for the email addresses used to open the Selling Accounts of Defendants Li Zhonyi and Pan Linxing is @163.com, another free e-mail service popular in China operated by Chinese-based technology company, NetEase Information Technology and Corporation. The domain for the email addresses used to open the Selling Accounts of Defendants Hu Wei and Zhu Shaochuan is @hotmail.com, an e-mail service operated by Microsoft.

D. Requested Discovery.

Expedited discovery through third-party subpoenas to the financial institutions associated with the bank accounts and credit cards linked to the Selling Accounts as well as the email providers linked to the Selling Accounts will likely uncover crucial information about the

1 counterfeiting operation and the individuals behind it, both known and unknown. Commerson
2 Decl. ¶ 3. Because Plaintiffs' proposed expedited discovery is focused, both in scope and as to
3 the third parties Plaintiffs wish to serve, the request is targeted to accomplish the goals
4 authorized by law as set forth above—to identify unknown Defendants, locate the current
5 whereabouts of known and unknown Defendants, and obtain key information about the location
6 of counterfeit goods and proceeds from their sale. Accordingly, Plaintiffs respectfully request
7 that the Court authorize expedited discovery through third-party subpoenas relating to the
8 allegations and claims in this case to First Century Bank, N.A., Payoneer, Sina Corporation,
9 NetEase Information Technology Corporation, and Microsoft. *See id.*

10 **III. ARGUMENT**

11 **A. The Court Should Authorize Early Discovery to Locate Defendants and
12 Other Potential Bad Actors.**

13 Federal Rule of Civil Procedure 26 provides that a party "may not seek discovery from
14 any source before the parties have conferred as required by Rule 26(f), except . . . when
15 authorized . . . by court order." Fed. R. Civ. P. 26(d)(1). Although the Ninth Circuit has not
16 directly defined the standard for allowing expedited discovery, "courts in this jurisdiction
17 require that the moving party demonstrate that 'good cause' exists to deviate from the standard
18 pretrial schedule." *Music Grp. Macao Commercial Offshore Ltd. v. John Does I-IX*, 2014 WL
19 11010724, at *1 (W.D. Wash. July 18, 2014) (Martinez, J.); *Microsoft Corp. v. Mai*, 2009 WL
20 1393750, at *5 (W.D. Wash. May 15, 2009) (Jones, J.); *Renaud v. Gillick*, 2007 WL 98465, at
21 *2 (W.D. Wash. Jan. 8, 2007) (Lasnik, J.).

22 "Good cause exists 'where the need for expedited discovery, in consideration of the
23 administration of justice, outweighs the prejudice to the responding party.'" *Microsoft Corp.*,
24 2009 WL 1393750, at *5 (quoting *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273,
25 276 (N.D. Cal. 2002)). Courts routinely allow early discovery where it will "substantially
26 contribute to moving th[e] case forward" and is "narrowly tailored" for that purpose. *Semitool*,
27 208 F.R.D. at 277. The relevant factors in assessing good cause are the requesting party's

1 diligence, its intent in seeking the requested information, and whether the opposing party will
2 be prejudiced if the Court grants the motion. *See Renaud*, 2007 WL 98465, at *3; *Music Grp.*,
3 2014 WL 11010724, at *1-2. Each factor supports granting Plaintiffs' motion:

4 1. Plaintiffs' Diligence

5 Plaintiffs have been diligent in attempting to uncover the identities and locations of the
6 Defendants and the other bad actors responsible for the illegal counterfeiting scheme alleged in
7 the Complaint. Plaintiffs have attempted to identify and locate Defendants both in the United
8 States and in China as part of a parallel criminal investigation through: (1) using investigative
9 and law enforcement tools, including TransUnion's software, TLO, (Commerson Decl. ¶ 4,
10 Calvert Decl. ¶¶ 16); (2) examining the information Defendants provided to Amazon when
11 creating their Selling Accounts (Calvert Decl. ¶ 16); (3) searching public records for the names
12 and addresses provided by Defendants in creating their Selling Accounts (*id.*); and (4) tracing
13 the IP addresses for the computers through which logins to these Selling Accounts were made
14 (*id.*). Despite these extensive efforts, Plaintiffs have been unable to locate the true identities of
15 the Defendants and their current whereabouts.

16 Accordingly, this factor supports granting Plaintiffs leave to conduct expedited
17 discovery.

18 2. Plaintiffs' Intent

19 Plaintiffs seek information about the persons, their whereabouts, and the financial
20 transactions behind the counterfeiting scheme, as well as the identities of additional unknown
21 defendants, in order to hold them legally accountable for their misconduct. Plaintiffs
22 reasonably believe that limited expedited discovery of third-party companies will help them
23 determine the Defendants' current whereabouts as well as the identities of other bad actors
24 involved in the scheme. The Ninth Circuit has repeatedly recognized the propriety of such
25 expedited discovery into the identities of defendants. *See Gillespie v. Civiletti*, 629 F.2d 637,
26 642 (9th Cir. 1980); *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999); *see also*
27 *Young v. Transp. Deputy Sheriff I*, 340 F. App'x 368, 369 (9th Cir. 2009), *cert. denied* 558 U.S.

1 1096 (2009) (vacating judgment and remanding to district court to allow plaintiff the
2 opportunity to discover the identity of two unknown deputy sheriff defendants). Discovery into
3 the financial institutions associated with the Selling Accounts will also help Plaintiffs trace the
4 illicit proceeds obtained from the scheme.

5 Plaintiffs anticipate they will complete their parallel criminal investigation within
6 several months, at which point they will move to unseal the case. In the meantime, they are
7 seeking expedited discovery in order to discover crucial information about the counterfeiting
8 operation and the individuals behind it, both known and unknown. *Commerson Decl.* ¶ 3.
9 Expedited discovery may uncover information about the Defendants' current whereabouts so
10 that Plaintiffs can serve them with the Complaint after it is unsealed. *Id.* ¶ 3. Because
11 Plaintiffs' intent is to "advance the litigation and save judicial resources," *Renaud*, 2007 WL
12 98465, at *3, this factor supports granting Plaintiffs leave to conduct expedited discovery.

13 **3. Prejudice to Defendants**

14 The Defendants will suffer no cognizable prejudice if Plaintiffs are granted leave to
15 conduct expedited discovery. Plaintiffs' request for expedited discovery is narrowly tailored to
16 include only the information necessary to identify and locate the persons and/or entities
17 propagating an illegal campaign that harmed Plaintiffs and their customers. Further, the
18 requested discovery is directed at non-parties, not the Defendants. Granting "third party
19 document requests will not impose a significant burden upon [D]efendants." *Id.* Accordingly,
20 Defendants will suffer no cognizable prejudice if the Court grants Plaintiffs' motion.

21 **IV. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully ask the Court to grant leave, prior to
23 the Rule 26(f) conference, to serve Rule 45 subpoenas to obtain information from email service
24 providers and banks utilized by the Defendants or associated with the Defendants' illegal
25 counterfeiting scheme. Plaintiffs may request leave to serve additional Rule 45 subpoenas on
26 any other companies to the extent they are identified in subpoena responses as having

1 responsive information for the limited purpose of identifying and locating the Defendants and
2 other bad actors responsible for the illegal counterfeiting scheme alleged in the Complaint.

3 DATED this 29th day of April, 2021.

4
5 DAVIS WRIGHT TREMAINE LLP
6
7 Attorneys for Plaintiffs

8
9
10 s/ Lauren B. Rainwater
11 Lauren B. Rainwater, WSBA #43625

12
13 920 Fifth Avenue, Suite 3300
14 Seattle, WA 98104-1604
15 Tel: (206) 622-3150
16 Fax: (206) 757-7700
17 Email: laurenrainwater@dwt.com

18
19 s/ Scott R. Commerson
20 Scott R. Commerson (*pro hac vice*
21 *application forthcoming*)

22
23 865 South Figueroa Street, Suite 2400
24 Los Angeles, CA 90017-2566
25 Tel: (213) 633-6800
26 Fax: (213) 633-6899
27 Email: scottcommerson@dwt.com